

Serial No. 10/532,687

Supplemental Amendment C filed March 2, 2009

Response to Office Communication mailed January 2, 2009

REMARKS

Reconsideration of this application and the rejection of claims 1-12 and 14-15 are respectfully requested. Applicant appreciates being allowed to submit Supplemental Amendment C and has attempted to address every objection and ground for rejection in the Office Action dated August 1, 2008 (Paper No. 20080731) and the Office Communication dated January 2, 2009 (Paper No. 20081230). Applicant believes the application is now in condition for allowance. The claims have been amended to more clearly describe the present invention.

As a preliminary matter, there are no co-pending U.S. applications that set forth similar subject matter to the present claims.

I. Rejections Under 35 U.S.C. §112

Claims 1-12 and 14-15 stand rejected under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement. Applicant has amended the claims to clarify the language of the claims and submit that the rejections have been overcome through amendment. As such, Applicant respectfully requests that the rejections under 35 U.S.C. § 112 be removed and the application be allowed as presented.

Specifically, the Examiner alleges that the claim language stating “fractionating under a nitrogen atmosphere the eluted portion of the rabbit skin based on molecular weight” is not described in the specification. Applicant has amended the claim to remove the claim

Serial No. 10/532,687

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language “based on molecular weight” and therefore, believes this rejection has been overcome.

In addition, Claims 1-12, 14 and 15 were rejected as being indefinite for reciting “feeding the rabbit having rabbit skin tissues vaccinated with vaccine virus.” Amended claim 1 now recites, among other things, “feeding the rabbit having the vaccinated rabbit skin tissues.” Applicant believes this is sufficient to clarify that the claim element requires providing food to the rabbit from which the skin is eventually obtained.

Claim 11 stands rejected because “the rabbit skin inflammatory tissues” has no antecedent basis. Applicant has amended claim 11 to include “the rabbit skin inflamed tissue” as recited in claim 1. Therefore, Applicant believes this rejection has been overcome.

Claims 14 and 15 stand rejected for being unclear as to whether the claims are drawn to skin per se or to a drug or health food. Applicant has amended claims 14 and 15 so they are directed to a drug and a health food, respectively. As such, Applicant believes claims 14 and 15 are now in condition for allowance. Accordingly, the Section 112 rejections are respectfully traversed.

II. Rejections Under 35 U.S.C. §102

Claims 1-12, 14, and 15 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,057,324 to Shibayama et al. (“Shibayama”). Shibayama is cited to teach a rabbit skin abstract that has inhibitory activity against kallikrein formation,

Serial No. 10/532,687

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wherein the substance is a drug. Amended claim 1 now incorporates features of canceled claim 12 and recites, among other things, a rabbit skin containing a kallikrein production inhibition activity, said rabbit skin having rabbit skin tissues possessing a specific alteration of rhythm in environmental temperature activity (“SART activity”) of 0.5 iu/g or more. The Examiner admits the failure of Shibayama to disclose this property (see Office Action mailed February 8, 2008, Paper No. 20080131). Accordingly, the Section 102 rejection is respectfully traversed.

III. Rejections Under 35 U.S.C. §103

Claims 1-12 and 14-15 stand rejected under 35 U.S.C. §103, as being obvious in view of Shibayama. As indicated above, Applicant has amended claim 1 to include features not disclosed or suggested in Shibayama. Therefore, Applicant respectfully submits that, as demonstrated above, the presently claimed subject matter differs substantially from Shibayama. Shibayama fails to teach, suggest, or disclose subject matter such as a rabbit skin having rabbit skin tissues possessing at least 0.5 iu/g SART activity. This is significant in that assuming *arguendo* that Shibayama discloses similar treatment procedures involving rabbit skins, the reference still fails to appreciate the recited objective of enhanced SART activity. Applicant respectfully disputes the Examiner’s contention “regarding the SART activity, the skin of the art is the same as that claimed, thus it must intrinsically exhibit the claimed activity.” It is well settled that the failure of a reference to disclose or suggest a

Serial No. 10/532,687

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claimed property, let alone a recited range of such a property, supports nonobviousness of the claim. Based on the total failure of the reference to disclose or suggest this property, Applicant respectfully submits that the Examiner is employing impermissible hindsight reasoning in making this rejection.

In addition, the rabbit skin of new claim 16 is patentably distinct because it has undergone a series of unique steps which the Examiner admits are lacking in Shibayama. These steps include: feeding the rabbit, selecting each of the claimed strains of the vaccinia, selecting the types of rabbit, and selecting the amount of the virus used. Accordingly, a rabbit skin of the art does not intrinsically exhibit rabbit skin tissues possessing 0.5 iu/g SART activity or more and Shibayama does not disclose or suggest this feature.

Therefore, Applicant submits that as amended, the claims are distinguishable over Shibayama since Shibayama does not disclose or suggest all features of the present invention. Accordingly, the Section 103 rejection is respectfully traversed.

IV. Conclusion

In view of the above-identified amendments and remarks, Applicant respectfully submits that the claims in their present form are allowable over the issues raised in the Office Communication mailed January 2, 2009 and Office Action mailed August 1, 2008. In the event that there are further issues which may be resolved by a telephone interview, the Examiner is urged to contact Applicant's undersigned Attorney at the telephone number listed below.

Serial No. 10/532,687

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Respectfully submitted,

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